

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 10-866

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING AN AGREEMENT WITH GOLD COAST TRANSIT, INC., FOR BUS BENCHES WITH RECEPTACLES AND BUS TRANSIT SHELTERS WITH BENCHES, FOR AN INITIAL TWO (2) YEAR ELEVEN (11) MONTH TERM, AND SHALL RENEW FOR TWO SUCCESSIVE THREE (3) YEAR PERIODS UNLESS TERMINATED BY EITHER PARTY; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: That the City Commission of the City of Margate, Florida, hereby approves an Agreement with Gold Coast Transit, Inc., for bus benches with receptacles and bus transit shelters with benches for an initial two (2) year eleven (11) month term, and shall renew for two (2) successive three-year periods unless terminated by either party.


SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute said Agreement on behalf of the City of Margate, a copy of which is attached hereto and specifically made a part of this Resolution.

SECTION 3: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 7th DAY OF February 2007.

ATTEST:

  
CITY CLERK JUDITH A. KILGORE

  
MAYOR FRANK B. TALERICO

RECORD OF VOTE:

Bross	<u>No</u>
Varsallone	<u>Aye</u>
Donovan	<u>Aye</u>
McLean	<u>Aye</u>
Talerico	<u>Aye</u>

AGREEMENT

This Agreement made and entered into on this 7 day of February, 2007, by and between the City of Margate, a political subdivision of the State of Florida, having its principal address at 5790 Margate Boulevard, Margate, Florida, (hereinafter "City of Margate"), and the Gold Coast Transit, Inc., having its principal address as 3921 SW 47<sup>th</sup> Avenue, Suite 1010, Davie, Florida, 33314 (hereinafter "Gold Coast" or "Gold Coast Companies"),

WITNESSETH:

WHEREAS, the previous company supplying and maintaining bus benches within the City of Margate removed said benches abruptly and without prior notice to the City of Margate; and

WHEREAS, the City of Margate, in order to serve its citizens' needs, it needs to immediately provide for bus benches for its residents and citizens; and

WHEREAS, the administration of the City of Margate had been in contact with Gold Coast Transit, Inc., for supplying a bus bench with waste receptacle, bus transit shelter with waste receptacle, and advertising program to the City of Margate; and

WHEREAS, this matter is deemed to be an emergency affecting the health, safety and welfare of the citizens of the City of Margate;

NOW THEREFORE, in consideration of the mutual promises expressed herein, the parties agree as follows:

THE DOCUMENTS

1. The above recitations are true and correct and are incorporated by reference.

COMMENCEMENT OF THE AGREEMENT, ADDITIONAL THREE-YEAR TERM

2. The initial term of this Agreement shall be for a period of two (2) years eleven (11) months, commencing on February 8, 2007, and ending December 31, 2009. This Agreement shall renew for <sup>two</sup> ~~one~~ (2) successive three-year period unless either party gives notice to the opposite party that they wish to terminate this Agreement ninety (90) days before the end of the current term then in force.

PERFORMANCE AND SCOPE OF SERVICE

3. The Gold Coast Companies will faithfully and fully perform every term, covenant, and condition of this Agreement which are all of equal dignity and binding on City of Margate.

4. The City of Margate will faithfully and fully perform every term, covenant, and condition of this Agreement which are all of equal dignity and binding on Gold Coast.

5. The City of Margate agrees to allow Gold Coast the right, privilege and license, without cost to the City to place benches with receptacles and bus transit shelters with benches upon the public space within the City of Margate town limits at various transit stops and other points of public convenience as specifically authorized by the City.

6. Gold Coast shall provide all labor, materials, equipment and services necessary to provide, erect and maintain a bus bench and bus transit shelter program in the City of Margate.

All installations shall meet FDOT, County and ADA regulations.

7. Both parties agree to cooperate and use best efforts with each other in connection with all matters contemplated in this Agreement.

#### PAYMENTS

8. Gold Coast agrees to pay the City of Margate Seven Thousand Dollars within ninety (90) days of approval of this Agreement and, Seven Thousand Dollars per year or One Hundred Dollars (\$100.00) per bench, or ten percent (10%) of the gross advertising revenue from the bus benches, whichever is greater, for the right, privilege, and license to construct, install, and place the bus benches provided in this Agreement within the municipal boundaries of the City.

At the beginning of the fifth year (2011) and all subsequent years of the Agreement, Gold Coast agrees to pay the City of Margate Seven Thousand Dollars Seven Thousand Dollars per year or One Hundred Dollars (\$100.00) per bench, or fifteen percent (15%) of the gross advertising revenue from the bus benches, whichever is greater, for the right, privilege, and license to construct, install, and place the bus benches provided in this Agreement within the municipal boundaries of the City.

Payment of the first Seven Thousand Dollars (\$7,000.00) set forth herein shall be made within ninety (90) days of approval of this Agreement. Subsequent payments (years 3 through 6) shall be made in quarterly installments of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) beginning on April 1<sup>st</sup> of each year.

9. Gold Coast agrees to pay the City of Margate Ten Percent (10%) of gross revenues per year from the bus transit shelters for the right, privilege, and license to construct, install, and place the bus transit shelters provided in this Agreement within the municipal boundaries of the City. Payment of the Ten Percent (10%) set forth herein shall be made in quarterly installments beginning the first day of the second year of this Agreement. Beginning the fifth year (2011)

of the Agreement, Gold Coast agrees to pay the City of Margate Fifteen Percent (15%) of gross revenues per year from the bus transit shelters for the right, privilege, and license to construct, install, and place the bus transit shelters provided in this Agreement within the municipal boundaries of the City. Payment of the Fifteen Percent (15%) set forth herein shall be made in quarterly installments beginning the first day of the fifth year of this Agreement.

Payment must be made by certified check, cashier's check or a Gold Coast company check drawn on a bank with Florida offices.

10. The City of Margate shall have the right to audit only those books, records and accounts of Gold Coast which are pertinent to this Agreement provided the City of Margate has given the Gold Coast Companies a thirty (30) day written notice of its intent to perform such an audit. Any audit of Gold Coast records undertaken by the City of Margate will be solely at the expense of the City of Margate and shall take place on Gold Coast's business premises. Gold Coast shall keep the books, records and accounts of this Agreement at its offices in Broward County during the term of the Agreement or until any audit findings are resolved, whichever is longer.

11. Either party may open the fee structure for discussion at any time during this agreement.

PERMITTING AND INSTALLATION  
PLACEMENT AND MAINTENANCE

12. The City of Margate shall not charge individual license or permit fees to the Gold Coast Companies with respect to the installation and operation of any single bus bench or any single transit shelter that is the subject of this Agreement. All benches installed pursuant to this contract shall be installed under one Master License and one Master Permit issued by the City of Margate for the exclusive use of the Gold Coast Companies in performing this Agreement.

13. Gold Coast represents that all persons performing this Agreement have the knowledge and skills to perform their duties under this Agreement. The Gold Coast Companies is an independent contractor under this Agreement. Materials, supplies, services, and goods shall be subject to the supervision of Gold Coast. In providing services hereunder, neither Gold Coast nor its agents shall act as an officer, employee, or agent of the City of Margate. This Agreement does not constitute a partnership or joint venture between the City of Margate and the Gold Coast Companies.

14. Gold Coast will place a minimum of fifteen (15) benches with adjacent City of Margate approved trash receptacles, upon public space within the City of Margate, at various transit stops and at other points of public convenience as specifically authorized by the City by February 14, 2007, provided that the placement does not obstruct passage along the public way, create a hazard or would otherwise be detrimental to the safety, welfare, morals or health of the

citizens of the City of Margate. By May 1, 2007, Gold Coast shall place up to eight-five (85) additional bus benches under the same standards as provided herein for the first fifteen (15) benches.

15. Gold Coast shall install Thirty (30) new transit shelter units within the City of Margate with priority placement in the Community Redevelopment Agency Town Center area, and the 441 corridor. Transit shelters shall be custom designed for the City of Margate and the Margate Community Redevelopment Agency. All units shall contain trash receptacles and convenience benches. Final color and design shall be subject to City and CRA approval. The maintenance schedule shall be the same as the bench maintenance schedule with the addition of quarterly pressure cleaning of the transit units.

16. Any benches or transit shelter units placed at transit stops in the City of Margate shall require the authorization and approval of the City in advance of placement in advance of placement. Such placement shall be made only where there is no objection of the abutting property owner and it shall be subject to the terms of this Agreement.

17. Gold Coast shall monitor its benches and transit shelter units and shall respond within twenty-four (24) hours to the City's request for maintenance, repair, and/or graffiti removal. Gold Coast shall follow industry standards for safety and maintenance in the installation, servicing, safekeeping, repair, and removal of its bus benches and transit shelter units. Gold Coast shall provide trash pickup and bench and transit shelter unit maintenance on Tuesdays and Fridays. Non Advertising benches shall be included in the Gold Coast's regular maintenance schedule.

18. In the event that a bus bench or transit shelter unit is destroyed through the intentional or negligent act of any third party, or is damaged or destroyed by any act of nature, war, riot or other major upheaval (a force majeure), or in the opinion of the City or Gold Coast, the immediate area surrounding a bus bench poses a legitimate hazard to the safety of the user as a result of any such force majeure, Gold Coast shall have the right, on a temporary emergency basis, to remove, replace, or relocate the bus bench or transit shelter unit to a location which, in the sole opinion of Gold Coast, puts the bench or transit shelter unit away from the hazardous area, if said location meets all other criteria provided in this contract. Any temporary emergency relocation of a bus bench or transit shelter unit shall remain effective until such time as Gold Coast, the City of Margate, or the abutting property owner has cured the hazard.

19. All benches and transit shelter units placed and installed by Gold Coast under this Agreement are the property of the Gold Coast Companies and shall be in compliance with FDOT standards for placement and shall be ADA compliant. Gold Coast agrees to install concrete pads at all bench and transit shelter locations pursuant to ADA requirements.

Gold Coast shall provide at no cost to the City, trash pick up at all non-advertising benches located in the CRA Town Center area.

#### LEASE OF ADVERTISING SPACE ON BENCHES AND TRANSIT SHELTER UNITS

20. Gold Coast shall have the right, privilege, and license, as granted by the City of Margate herein, to lease advertising space on all Gold Coast benches and transit shelter units outside of the designated CRA Town Center area.

21. Advertising space on any single bus bench and any single transit shelter unit shall be determined by the City and/or the CRA.

22. Gold Coast shall not lease advertising space to adult businesses as defined in the Zoning Code of the City of Margate. Advertising space sold to advertise alcoholic beverages shall be at the discretion of the City Manager.

23. In the event the City of Margate objects to proposed advertising or, in the judgment of the City, deems posted advertising to be of an immoral or otherwise objectionable nature, the City shall document its specific reason for such objection in writing and provide such documentation to the Gold Coast companies. Gold Coast will remove the objectionable advertising within ten (10) days of receipt of notice from the City.

24. The Gold Coast Companies comply with all O.A.A.A. (Outdoor Advertising Association of America) guidelines regarding content of outdoor advertising posted on its benches.

#### DEFAULT AND CURE

25. Either party may terminate this Agreement by providing notice in accordance with the Notice section of this Agreement.

26. Notice of termination may be provided by the City of Margate to Gold Coast in the event any one of the following causes of default occurs:

- a. Failure to pay any sums when due;
- b. Failure to comply with any term, covenant, or condition of this Agreement;
- c. Failure to have the required insurance in force and effect;
- d. The placement of any Gold Coast company on the convicted vendor list pursuant to the State of Florida Public Entity Crime Act Section 287.133, Florida Statutes; or
- e. Failure of Gold Coast Companies to comply with all federal, state, or local laws, codes ordinances, rules or regulations in performing its collective duties, responsibilities or obligations pursuant to this Agreement.

27. The Gold Coast Companies shall have sixty (60) days to fully cure any specified defaults provided written notice has been given hereunder. If at the end of sixty (60) days the default has not been fully cured and brought into compliance with the relevant conditions set forth in this Agreement, the City of Margate shall provide a final written notice of termination to Gold Coast and this Agreement shall terminate ten (10) days thereafter. Thereafter, the City of Margate shall be entitled to receive any sums due it through the date of termination and the Gold Coast companies shall be required to remove their bus benches and transit shelter units from within the city limits of the City of Margate within a reasonable period of time. No further action or legal proceeding will be necessary to implement this section.

#### NOTICE

28. Notice given under this Agreement must be in writing, sent by U. S. mail, postage prepaid, return receipt requested, addressed to the party for it is intended at the place last specified. The place for giving all notice for the present, and until such time as the place is changed in writing in the manner provided in this section, is set forth below:

For the City: Francis J. Porcella  
City Manager  
5790 Margate Boulevard  
Margate, Florida 33063

For Gold Coast: Alison J. Oliver  
Marketing Director-Community Liaison  
Gold Coast Transit, Inc.  
3921 SW 47<sup>th</sup> Avenue  
Suite 1010  
Davie, Florida 33314

29. This Agreement and the Exhibits set forth the entire Agreement between the parties and there are no promises or understandings other than those stated herein. No amendment, modification, or alteration will be allowed except by written instrument of the parties executed with all the formalities of this Agreement.

30. Venue for any proceedings or action brought pursuant to the Agreement shall be in Broward County, Florida. The Agreement and the incorporated Exhibits shall be construed and interpreted under the law of the State of Florida.

#### INSURANCE

31. Gold Coast shall at all times after the execution of this Agreement, indemnify, hold harmless and pay on behalf of the City of Margate, its officers, agents, servants or employees against any and all losses, liabilities, or expenditures

of any kind regarding the installation, placement and maintenance of the subject benches. This indemnity includes attorney's fees, court costs and expenses caused by a negligent act or omission by Gold Coast, its employees, agents, servants, or officers accruing, resulting from or related to the subject matter of this Agreement including, without limitation, any and all demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or termination of this Agreement.

32. To ensure indemnification obligation contained above, Gold Coast shall, at a minimum, provide for, pay and maintain insurance coverages required by this Agreement at all times during the term of the Agreement.

33. Gold Coast shall maintain Workers' Compensation and Employers' Liability coverage to apply to all employees of an Gold Coast company at statutory limits in compliance with applicable state and federal laws. Coverage must include Employers' Liability with a minimum bid of \$100,000 each accident.

34. Gold Coast shall maintain a Business Auto Policy or similar form of insurance with a minimum limit of \$300,000 per occurrence combined single limit for bodily injury and property damage liability. This policy shall include owned, hired and non-owned vehicles.

35. Gold Coast shall maintain a Commercial General Liability insurance policy, or similar policy, with a minimum limit of \$1,000,000 per occurrence combined single limit for personal injury, bodily injury, and property damage liability. Coverage shall include premises and/or operations, independent contractors, product and/or complete operations, contractual liability and broad form property damage endorsements. Coverage for hazards of explosion, collapse and underground property damage must also be included when applicable to the work performed.

36. Signed Certificates of Insurance evidencing that these required insurance coverages have been procured by Gold Coast in the types and amounts required hereunder, shall be furnished to the City Manager within ten (10) days of the execution of this Agreement.

37. All Certificates of Insurance except Workers' Compensation and Employers' Liability, shall clearly state that the Contract has been endorsed to include the City of Margate, a political subdivision of the State of Florida its officers, agents, and employees as additional insureds. All Certificates of Insurance shall support the Indemnity provisions of Paragraph 31 of this Agreement, and shall so state on the face of the Certificates. All Certificates of Insurance shall provide thirty (30) day written notice to the City of Margate prior to any adverse changes, cancellation or non-renewal of coverage.



FORCE MAJEURE

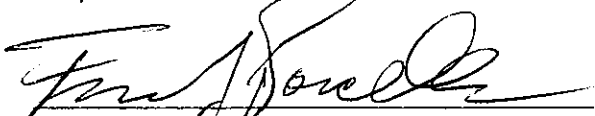
38. Neither party to this Agreement shall be liable for any delay or failure under the Agreement to the extent the delay or failure result from causes beyond the party's control, occurring without fault or negligence, including, without limitation, failures or delays resulting from natural disasters (including inclement weather, tornadoes, tropical storms and hurricanes) wars, riots or other major upheavals, or performance failures outside the control of such applicable party ("force majeure"). Any dates by which performance obligations are scheduled to be met will, as a result of force majeure, be extended by a period of time equal to the time lost due to any such delay. Force majeure shall apply to the obligations of the City of Margate regarding the removal of all existing bus benches in the City limits. Force majeure shall also apply to all Gold Coast obligations where a timing obligation is imposed with respect to the installation of benches or in connection with site and bench maintenance obligations.

39. This agreement shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.

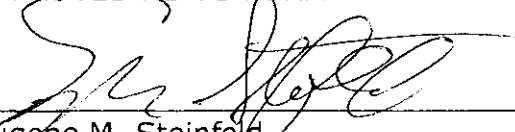
**40. The parties to this agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.**

CITY OF MARGATE

By:   
\_\_\_\_\_  
Mayor Frank B. Talerico

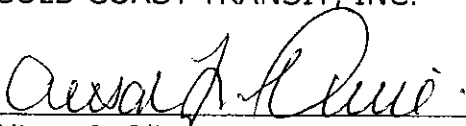
By:   
\_\_\_\_\_  
Francis J. Porcella  
City Manager

APPROVED AS TO FORM

  
\_\_\_\_\_  
Eugene M. Steinfeld  
City Attorney

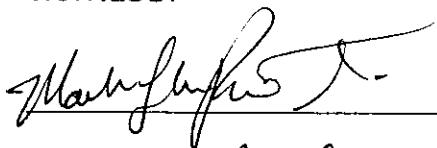
Agreement with Gold Coast Transit, Inc.  
And City of Margate entered into  
February \_\_\_\_, 2007

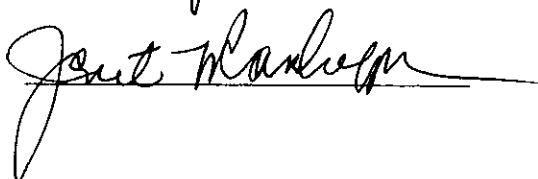
GOLD COAST TRANSIT, INC.

By:   
Alison J. Oliver

Vice President

WITNESS:





Proposed Bench # 1





**Proposed Bench #2**

